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No. 91-7050

MAY 22 1992

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1991

KEVIN G. TAYLOR,
PETITIONER

VS.

UNITED STATES OF AMERICA,
RESPONDENT

PETITIONER'S REPLY TO GOVERNMENT'S
OPPOSITION TO WRIT OF CERTIORARI

The Petitioner Kevin G. Taylor respectfully submits this Reply to the Government's Opposition to Writ of Certiorari.

The government's opposition to the petition regarding the Interstate Agreement on Detainers ("IAD") has two prongs. The first is that the Petitioner waived his IAD rights at the arraignment and the second is that he has not claimed any prejudice because of the acknowledged IAD violation.

WAIVER

The government misstates the record when it asserts that the Petitioner exercised a free choice to waive his IAD rights at the Arraignment. (A copy of the transcript of the Arraignment is part of the record and is found in pages 32-42 of the Court of Appeals Appendix.) At the Arraignment, Magistrate Cohen informed the Petitioner that he had the right to remain silent. The Magistrate then had a discussion with the prosecutor about detainers. The Magistrate then informed the Petitioner that he could be held federally and lose time on his state sentence or go back to the state institution. (This statement by the Magistrate is incorrect. Under the terms of the IAD, the Petitioner's state sentence would not have been interrupted if he had been detained federally. See Article V(f) of the IAD.) The Petitioner merely replied that he just did not want his state sentence interrupted.

At no time did the Petitioner waive any right at the Arraignment. The Petitioner merely stated that he did not want his state sentence interrupted and he otherwise exercised his right to remain silent. The Petitioner was unrepresented by counsel at the Arraignment. The government's Opposition by implication argues that not only does the Petitioner not have the right to remain silent, but he also has the affirmative duty to speak even before he has had the opportunity to confer with defense counsel. The government asserts that the Petitioner has the affirmative duty to inform the government what it is doing. - He has the duty to inform

the U.S. Attorney what the U.S. Marshall is doing. Clearly, the Petitioner has no such duty. If the government does not know what it is doing, then it must suffer the consequences of its errors.

The Petitioner has addressed the issue of Waiver in his Brief to the Court of Appeals at pages 14 - 23. The First Circuit considered the government's contention that the Petitioner had an obligation to speak and dismissed the contention in footnote 1 of that Court's decision.

NO SHOWING OF PREJUDICE

Neither Article III nor IV of the IAD requires a defendant to assert, as a pre-condition, that he has been prejudiced by the placing of a detainer against him in order to secure the benefits of the IAD. Those Articles are procedural in nature. A defendant seeking to have untried indictments heard must comply with Article III and the government must comply with Article IV when it seeks temporary custody of a prisoner. Specifically for this case, Article IV does not impose on the defendant an obligation to show a harm before he is entitled to the protections of Article IV.

The government and the First Circuit have assumed that the Petitioner suffered no injury because of the detainer and, therefore, no IAD violation has occurred. It is the assumption that the Petitioner has suffered no harm because of the detainer that is contrary to the IAD. The government makes the Petitioner's


case when it argues that § 9(2) requires the District Court to consider a number of factors before actually dismissing an indictment with prejudice. Section 9(2) is designed, inter alia, to place on the record what injury, if any, that a defendant has suffered because of a detainer. Pursuant to §9(2), a defendant would have the opportunity to have counsel prepare for a hearing where testimony and documents along with argument could be presented to the District Court and specific findings made about whether dismissal with or without prejudice is appropriate. Nothing of this nature was done in this case.

Section 9(2) also makes clear that a defendant does not have to assert a harm to receive the benefits of the IAD. The issue of harm only arises after it has been determined that there has been a violation of the IAD and the District Court is deciding whether to dismiss the indictment with or without prejudice.

Lastly, while §9(2) permits an indictment to be dismissed with or without prejudice, the indictment is still dismissed. The government may or may not have the opportunity to bring a new indictment against the Petitioner, but the present indictment is nonetheless dismissed.

Dated: May 18, 1992

Respectfully submitted
Kevin G. Taylor
By His Attorney


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May 18, 1992

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United States Supreme Court
Washington, D.C. 20543

Re: Kevin G. Taylor, Petitioner
Vs: United States of America, Respondent
No: 91-7050

Dear Sir/Madam:

Please find enclosed for filing the following:

- 1.) Petitioner's Reply to Government's Opposition to Writ of Certiorari; and
- 2.) Certificate of Service.

Kindly place the enclosed matter on the Court's docket.

Thank you.

Very truly yours,


Daniel K. Sherwood

enc.

cc: Kevin Taylor
Kenneth W. Starr, Esq.

CERTIFICATE OF SERVICE

KEVIN TAYLOR, Petitioner v. UNITED STATES, Respondent

U.S. SUPREME COURT NO: 90-7050

The undersigned hereby certifies that he has this day mailed, by first class mail, postage prepaid, a copy of the within pleading to:

Kenneth W. Starr, Esquire
Solicitor General
U.S. Dept. of Justice
Washington, D.C. 20530

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Signed under the penalties of perjury this 18th day of May, 1992.



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